



W. Gamm
#27
10.3.03
PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Stephen Peter FITZGERALD et al.

Group Art Unit: 1743

Application No.: 09/389,082

Examiner: L. Cross

Filed: September 2, 1999

Docket No.: 104161

For: IMPROVEMENTS RELATING TO ASSAY DEVICES

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GROUP 1700

REQUEST FOR RECONSIDERATION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In reply to the July 1, 2003 Office Action, reconsideration of the rejection is respectfully requested in light of the following remarks.

Claims 1-3, 6-13 and 15-21 are pending.

The Office Action rejects claims 1-3, 6-13 and 15-21 under 35 U.S.C. §103(a) over European Patent No. 569753 to Westhall (hereinafter "Westhall") in view of U.S. Patent No. 5,945,334 to Besemer et al. (hereinafter "Besemer"). This rejection is respectfully traversed.

Westhall in combination with Besemer fails to teach or suggest an assay assembly (or a method of constructing an assay assembly) having a retaining means comprising at least one hot or cold formed projection on the inner surface of the side wall, as set forth in independent claims 1 and 17.

The Office Action admits that Westhall fails to teach or suggest the above-mentioned feature. However, the Office Action, at page 3, asserts that Besemer, in Fig. 21, teaches support structures 2115 in the packaging wall, each of the support structures 2115 being "a

projection in the well...." Applicants respectfully disagree with the Office Action's assertion, as well as its interpretation and application of the teachings of Besemer and Westhall to claims 1-3, 6-13 and 15-21.

Besemer, at col. 16, lines 58-62, and in Fig. 21, discloses that the "chip 120 is wedged and held into position by notch 2115." (Emphasis added) Thus, contrary to the Office Action's assertion, in Bessemer, the chip 120 is secured in notches 2115 formed in the walls of the cavity 310, not projections in the wall. The American Heritage College Dictionary, Third Ed., at page 933 (copy enclosed), defines "notch" as "a V-shaped cut" (emphasis added). The same dictionary, at page 1094 (copy enclosed), defines "projection" as a "thing or part that extends outward beyond a prevailing line or surface" (emphasis added).

Applicants respectfully submit that, based on its plain meaning, a notch on an inner surface of a side wall cannot be a projection on the inner surface of the side wall. Thus, Applicants submit that the Besemer fails to disclose, teach or suggest retaining means having the features set forth in independent claims 1 and 17.

Further, the Office Action asserts that "it would have been obvious to one of ordinary skill in the art to incorporate projections [of Besemer] onto the wells of Westhall so that chips will remain in the well in a secure manner." Applicants respectfully disagree.

First, as discussed above, Bessemer fails to disclose retaining means comprising at least one hot or cold formed projection on the inner surface of the side wall, as set forth in independent claims 1 and 17. Second, Applicants submit that there is no reason or motivation to modify Westhall to include retaining means because in Westhall, the holder, i.e., the tubular receiving element 2, is designed to be maintained in an upright condition.

For at least these reasons, Applicants respectfully submit that independent claims 1 and 17 are patentable over the applied art. Claims 2, 3, 6-13, 15, 16, 18-21, which depend

from claims 1 and 17 respectively, also are patentable over the applied art for at least the reasons discussed above.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-3, 6-13 and 15-21 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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Registration No. 27,075

George P. Simion
Registration No. 47,089

JAO:GPS/dmw

Attachment:

The American Heritage College Dictionary, Third Ed., pp. 933 and 1094

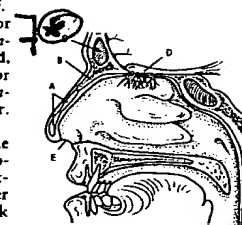
Date: September 26, 2003

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Norwegian elkhound



nose
A. Cartilage
B. Bone
C. Frontal sinus
D. Olfactory bulb
E. Nostril

write *She bought not only a car but also a lawnmower.* • In the *not only* construction *also* is often omitted when the second part of the sentence merely intensifies the first: *She is not only smart but brilliant.* See Usage Note at *only*.

no·ta (nō'tā): *n.* Pl. of *notum*.

no·ta be·ne (nō'tā bē'nē, bē'nē): *Used to direct attention to something esp. important.* [Lat. *nota bene*, note well.]

no·ta·bil·i·ty (nō'tā-bil'i-tē): *n., pl. -ties.* 1. The state or quality of being eminent or worthy of notice. 2. A prominent or notable person.

no·ta·ble (nō'tā-bal): *adj.* 1. Worthy of note or notice; remarkable. 2. Characterized by excellence or distinction; eminent. See *Syns* at *noted*. — *n.* 1. A person of distinction or great reputation. 2. Often *Notable*. One of a council of prominent persons in pre-Revolutionary France called into assembly to deliberate at times of emergency. — *no'ta·ble·ness* *n.* — *no'ta·bly* *adv.*

no·tar·i·al (nō-tār'ē-al): *adj.* 1. Of or relating to a notary public. 2. Executed or drawn up by a notary public. — *no'tar'i·al·ly* *adv.*

no·ta·rize (nō'tā-rīz): *tr.v., -rized, -rizing, -rizes.* To certify or attest to (the validity of a signature on a document, for example) as a notary public. — *no'ta·ri·za'tion* (-rī-zā-shən) *n.*

no·ta·ry (nō'tā-rē): *n., pl. -ries.* A notary public. [ME *notarie* < OFr. *notaire*, *notarie* < Lat. *notarius*, relating to shorthand, shorthand writer < *nota*, mark. See *NOTE*.]

notary public *n., pl. notaries public.* A person legally empowered to witness and certify the validity of documents and take affidavits and depositions.

no·tate (nō'tā): *tr.v., -tated, -tating, -tates.* To put into notation. [Back-formation < *NOTATION*.]

no·ta·tion (nō-tā'shən): *n.* 1. a. A system of figures or symbols used in a specialized field to represent numbers, quantities, tones, or values: *musical notation*. b. The act or process of using such a system. 2. A brief note; an annotation: *marginal notations*. [Lat. *notātiō*; *notātiō* < *notātus*, p. part. of *notāre*, to note < *nota*, note. See *NOTE*.] — *no'ta·tion·al* *adj.*

notch (nōch): *n.* 1. a. A V-shaped cut. b. Such a cut, used for keeping a record. 2. A narrow pass between mountains. 3. *Informal*. A level or degree: *a notch higher*. — *tr.v., notched, notching, notches.* 1. To cut a notch in. 2. To record by or as if by making notches: *notched the score on a stick*. 3. *Informal*. To achieve; score. [Prob. < the phrase **an otch* < Fr. *oche* < OFr. < *ochier*, to notch.]

note (nōt): *n.* 1. A brief record, esp. one written down to aid the memory. 2. A brief informal letter. 3. A formal written diplomatic or official communication. 4. A comment or an explanation, as on a passage in a text. 5. a. A piece of paper currency. b. A certificate issued by a government or a bank and sometimes negotiable as money. c. A promissory note. 6. *Mus.* a. A tone of definite pitch. b. A symbol for such a tone, indicating pitch by its position on the staff and duration by its shape. c. A key of an instrument, such as a piano. 7. The characteristic vocal sound made by a songbird or other animal. 8. The sign of a particular quality or emotion. 9. Importance; consequence. 10. Notice; observation. 11. *Obsolete*. A song, melody, or tune. — *tr.v., not·ed, not·ing, notes.* 1. To observe carefully; notice. See *Syns* at *see*. 2. To make a note of; write down. 3. To show; indicate. 4. To make mention of; remark. [ME < OFr. < Lat. *nota*, annotation. See *gnō·*.] — *not'er* *n.*

note·book (nōt'boōk): *n.* A book of blank pages for notes.

not·ed (nōt'ed): *adj.* Distinguished by reputation; famous: *a noted physician*. — *not'ed·ly* *adv.* — *not'ed·ness* *n.*

Syns: *noted*; *celebrated*, *eminent*, *famed*, *famous*, *illustrious*, *notable*, *preeminent*, *renowned*. The central meaning shared by these adjectives is "widely known and esteemed": *a noted author*; *a celebrated musician*; *a eminent scholar*; *a famed scientist*; *a famous actor*; *a illustrious judge*; *a notable historian*; *a preeminent archaeologist*; *a renowned painter*. *Ant:* *obscure*.

note of hand *n., pl. notes of hand.* See *promissory note*.

note·wor·thy (nōt'wūr'thē): *adj., -thier, -thiest.* Deserving notice or attention; notable: *a noteworthy advance in cancer research*. — *note'wor'th·i·ly* *adv.* — *note'wor'th·i·ness* *n.*

NOT gate (nōt) *n.* *Comp. Sci.* A logic circuit that produces an output inverse to the input. [< *NOT*.]

noth·ing (nūth'ing): *pron.* 1. No thing; not anything: *The box held nothing*. 2. No part; no portion: *Nothing remains of the old house*. 3. One of no consequence, significance, or interest: *He is nothing to me*. — *n.* 1. Something that has no existence. 2. Something that has no quantitative value; zero: *a score of two to nothing*. 3. One that has no substance or importance; a nonentity. — *adj.* Insignificant or worthless. — *adv.* In no way or degree; not at all: *She looks nothing like you*. — *Idiom.* *nothing doing*. *Informal.* Certainly not. [ME < OE *nāthing*; *nā*, *no*; see *no* + *thing*; see *THING*.]

Usage Note: According to the traditional rule, *nothing* is invariably treated as a singular, even when followed by an exception phrase containing a plural noun: *Nothing except your fears stands (not stand) in your way*.

ā pat	oi boy
ā pay	ou out
ār care	ōō tōok
ā father	ōō bōot
ē pet	ū cut
ē be	ūr urge
ī pit	th thin
ī pie	th this
ir pler	hw which
ō pot	zh vision
ō toe	ā about
ō paw	ī item

Stress marks:
' (primary);
' (secondary), as in
dictionary (dik'shā-nēr'ē)



Prohibition
Federal officer destroying
barrels of beer

U.S. political party formed in 1948 to support the presidential candidacy of Henry A. Wallace.

pro-gres'siv-izm (prō-grēs'iv-iz'm) *n.* 1. The principles and practices of political progressives. 2. Progressive education.

pro-gres'siv-ist *n.* — **pro-gres'siv-ist** *adj.*

pro-gres'siv-i-ty (prō-grēs'iv-i-tē, prōg'rē-) *n., pl.* -ties. The quality or degree of being progressive.

pro-hib'it (prō-hīb'it) *tr.v.* -it-ed, -it-ing, -its. 1. To forbid by authority: *Smoking is prohibited.* See **Syns** at **forbid**. 2. To prevent; preclude. [ME *prohibiten* < Lat. *prohibere*, *prohibit*: *pro-*, in front; see **pro-** + *hibere*, to hold; see **ghabh-**.]

pro-hi-bi-tion (prō'hib'ish'an) *n.* 1. The act of prohibiting or the condition of being prohibited. 2. A law, order, or decree that forbids something. 3. a. The forbidding by law of the manufacture, transportation, sale, and possession of alcoholic beverages. b. Prohibition. The period (1920–1933) during which the manufacture and sale of alcoholic beverages was forbidden in the United States.

pro-hi-bi-tion-ist (prō'hib'ish'-nist) *n.* 1. One in favor of outlawing the manufacture and sale of alcoholic beverages. 2. Often **Prohibitionist**. A member or supporter of the Prohibition Party. — **pro-hi-bi-tion-ism** *n.*

Prohibition Party *n.* A U.S. political party organized in 1869 that advocated prohibition.

pro-hib'i-tive (prō-hīb'it-iv) *adj.* also **pro-hib'i-to-ry** (-tōr'ē, -tōr'ē) *adj.* 1. Prohibiting; forbidding. 2. So high or burdensome as to discourage purchase or use: *prohibitive prices.* 3. So likely to win as to discourage competition. — **pro-hib'i-tive-ly** *adv.* — **pro-hib'i-tive-ness** *n.*

pro-in-su-lin (prō-in'su-lin) *n.* A single-chain polypeptide that is the precursor of insulin.

pro-ject (prō'jekt, -jekt) *n.* 1. A plan or proposal; a scheme. See **Syns** at **plan**. 2. An undertaking requiring concerted effort: *a cleanup project.* 3. An extensive task undertaken by a student or group of students to apply, illustrate, or supplement classroom lessons. 4. A housing project. — *v.* **pro-ject** (prō'jekt') *ject-ed, -ject-ing, -jects.* — *tr.* 1. To thrust outward or forward: *project one's jaw.* 2. To throw forward; hurl. 3. To send out into space; cast. 4. To cause (an image) to appear on a surface. 5. *Math.* To produce (a projection). 6. To direct (one's voice) so as to be heard clearly at a distance. 7. *Psychol.* To externalize and attribute (an emotion, for example) to someone or something else. 8. To convey an impression of to an audience or to others. 9. To form a plan or an intention for. 10. To calculate, estimate, or predict (something in the future), based on present data or trends. — *intr.* 1. To extend forward or out; jut out. 2. To direct one's voice so as to be heard clearly at a distance. [ME *projecte* < Lat. *proiectum*, projecting structure < neut. p. part. of *proicere*, to throw out: *pro-*, forth; see **pro-** + *iacere*, to throw; see **ye-**.] — **pro-ject'a-ble** *adj.*

pro-ject-ile (prō-jekt'äl, -täl) *n.* 1. A propelled object, such as a bullet, having no capacity for self-propulsion. 2. A self-propelled missile, such as a rocket. — *adj.* 1. Capable of being impelled or hurled forward. 2. Driving forward; impelling. 3. *Zool.* Capable of being thrust outward; protrusile. [NLat. *proiectile*, neut. of *proiectilis*, that can be thrown < Lat. *proiectus*, p. part. of *proicere*, to throw out. See **project**.]

pro-ject-ion (prō-jekt'shən) *n., pl.* -tions. 1. The act of projecting or the condition of being projected. 2. A thing or part that extends outward beyond a prevailing line or surface. 3. A plan for an anticipated course of action. 4. A prediction or an estimate of something in the future, based on present data or trends. 5. a. The process of projecting a filmed image onto a screen, for example. b. An image so projected. 6. *Math.* The image of a geometric figure reproduced on a line, plane, or surface. 7. A system of intersecting lines, such as the grid of a map, on which part or all of the globe or another spherical surface is represented as a plane surface. 8. *Psychol.* The attribution of one's own attitudes, feelings, or desires to someone or something. — **pro-ject-ion-al** *adj.*

projection booth *n.* A booth, as in a theater, in which a movie projector is operated.

pro-ject-ion-ist (prō-jekt'shō-nist) *n.* 1. One who operates a movie or slide projector. 2. A maker of map projections.

pro-ject-ive (prō-jekt'iv) *adj.* 1. Extending outward; projecting. 2. Relating to or made by projection. 3. *Math.* Relating to or being a property of a geometric figure that does not vary when the figure undergoes projection. — **pro-ject-ive-ly** *adv.*

projective geometry *n. Math.* The study of geometric properties that are invariant under projection.

projective test *n.* A psychological test in which responses to unstructured stimuli, such as abstract patterns or incomplete sentences, are analyzed to determine personality traits, feelings, or attitudes.

pro-ject-or (prō-jekt'or) *n.* 1. A device for projecting a beam of light. 2. A machine for projecting an image onto a screen. 3. One who devises plans or projects.

pro-kar-y-ote also **pro-car-y-ote** (prō-kār'ē-ōt') *n.* An organism of the kingdom Prokaryotae, constituting the bacteria and cyanobacteria, characterized by the absence of a nuclear membrane and by DNA that is not organized into chromo-

somes. [Fr. *procaryote*: Gk. *pro-*, before; see **pro-** + *karuōtos*, having nuts < *karuon*, nut; see **kar-**.] **kar'y-ot'ic** (-ōt'ik) *adj.*

Pro-kho-rov (prō'kō-rōf'), Aleksandr Mikhailovich Russian physicist who shared a 1964 Nobel Prize with Sir Paul Dirac. b. 1902, Moscow. d. 1988. — **pro-kho-rov-i-ty** (prō-kō'rōf-ē-ē, -ēf, -kō-rō-, -kō-rō-) *n., pl.* -ties. The quality or degree of being Prokhorovian.

Pro-ko-pyevsk (prō-kōp'yevsk) *n.* A city of 500,000 people in the Novosibirsk region of Siberia. Pop. 274,000.

pro-lac-tin (prō-lāk'tin) *n.* A pituitary hormone that stimulates and maintains the secretion of milk.

pro-la-mine also **pro-la-min** (prō'lā-mīn, -mēn) *n.* A class of simple proteins found in the seeds of many grains. [PRO(LINE) + AM(MONIA) + -ine.]

pro-lapse (prō-lāps') *Medic.* — *intr.v.* -lapsed, -laps-es. To fall or slip out of place. — *n.* (prō-lāps') also **pro-lap-sus** (prō-lāp'ss) *n.* The slipping out of place of an organ or part. — *tr.v.* -lapsed, -laps-es, to fall down: *pro-*, forward; see **pro-**.]

pro-late (prō'lāt') *adj.* 1. Having the shape of an ellipse, elongated by rotating an ellipse about its longer axis so that the polar axis longer than the equatorial diameter. 2. *Math.* A part of *proferre*, to stretch out: *pro-*, forward; *lat-*, brought; see **tele-**.] — **pro-late-ly** *adv.* — **pro-late-ness** *n.*

prole (prōl) *n.* A proletarian.

pro-leg (prō'lēg') *n.* One of the stubby limbs on the initial segments of caterpillars and certain other insects. — **pro-leg-om-e-non** (prō'lēg'ōm'-ōn) *n.* 1. A preliminary discussion, esp. a formal one, preceding a lengthy or complex work. 2. *Philosophy.* A preliminary remark or observation. — *tr.v.* -pro-leg-ed, -pro-leg-ing, -pro-legs. To make a preliminary remark or observation. — *tr.v.* -pro-leg-ed, -pro-leg-ing, -pro-legs. To make a preliminary remark or observation. — *tr.v.* -pro-leg-ed, -pro-leg-ing, -pro-legs. To make a preliminary remark or observation.

pro-lep-sis (prō-lēp'sis) *n., pl.* -ses (-sez). 1. The representation of something as existing before its actual time, as in the precolonial United States. 2. The use of a descriptive word in a sentence that precedes it, as in *If you tell the cops, you're a man.* b. The use of a descriptive word in a sentence that precedes it, as in *If you tell the cops, you're a man.* b. The use of a descriptive word in a sentence that precedes it, as in *If you tell the cops, you're a man.*

pro-lep-tic (prō-lēp'tik) *adj.* 1. Relating to or characterized by prolepsis. 2. Anticipatory. 3. *Philosophy.* Relating to or characterized by prolepsis. 4. *Philosophy.* Relating to or characterized by prolepsis. 5. *Philosophy.* Relating to or characterized by prolepsis.

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prologue (prō'lōg') *n.* 1. A preface, esp. a poem recited to introduce an act, event, or period. [MLat. *prologus* < Gk. *prologos*, speech; see **leg-**.] 2. A formal dance, esp. a ball. — **pro-log-ic** (prō-lōg'ik) *n.* 1. A formal dance held for a special occasion. 2. A formal dance held for a special occasion.

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